

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Provision of Directory Listing Information)	CC Docket No. 99-273
Under the Communications Act of 1934,)	
As Amended)	
)	
The Use of N11 Codes and Other Abbreviated)	CC Docket No. 92-105
Dialing Arrangements)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan)	

Comments of

**Verband der Anbieter von Telekommunikations- und Mehrwertdiensten e.V.
("VATM")**

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Pursuant to the Notice of Proposed Rulemaking ("NPRM") in this proceeding¹, Verband der Anbieter von Telekommunikations- und Mehrwertdiensten e.V. ("VATM"), by its undersigned counsel, submits these comments to urge the Federal Communications Commission ("Commission") to end the ILEC monopoly over the 411 code for access to Directory Assistance ("DA"), and ensure that ILECs only charge cost-based, transparent and verifiable fees for providing their customer data to other DA providers.

The VATM is a German association representing more than 50 of the telecommunications and multimedia companies active in the German market. All of them compete with the ex-monopolist Deutsche Telekom AG ("DTAG"). The VATM represents about 80 percent of the private service providers in this sector by revenue. The VATM is an

¹ *Provision of Directory Listing Information*, et al., Notice of Proposed Rulemaking, CC Docket Nos. 99-273 92-105, and 92-237, FCC 01-384, released January 9, 2002 ("NPRM").

advocate for the concerns and demands of established market participants as well as new entrants. It seeks to create competitive conditions that will provide all participants in the market with a fair chance to succeed nationally and internationally. These goals extend to companies rolling out new infrastructures as well as for those offering innovative products and services without their own infrastructures, such as directory assistance providers.

The VATM is pleased to submit the following comments in the above-mentioned proceedings.

1. The FCC Should Follow the Lead of European Countries in Ending the Incumbent's Monopoly Over the 411 Code

Europe's experience with introducing competition to DA can be instructive to the FCC as it tackles this issue. For instance, similar to the U.S. 411 code, the Federal Republic of Germany had a monopoly code for DA. However, in 1997 the German Government took the bold move of being the first EU Member State to establish the 118xy numbering scheme for competitive DA services. This action gave competition in this market sector a boost and enabled Telegate within a relatively short time period to conquer a market share of more than a fourth from the incumbent DTAG. The 1997 decision spearheaded the liberalization of DA in Europe. Meanwhile, other European countries have successfully launched competition for DA services by adopting new abbreviated dialing codes for DA providers based on the pan-European 118xy numbering scheme. By 2000, 39 numbers according to the uniform code had been assigned in Germany to 28 companies for national DA and 10 numbers were in service for international DA. There is no reason to believe Europe's successes in this area cannot be carried over to the United States.

2. Opening the “411 Monopoly” Will Have a Positive Effect on Competition in the United States

It has been Germany’s experience that the opening of the 118xy numbering plan in Germany has led to competition. The competition has created pressure on DTAG to improve the accuracy of its customer data and the response times. Moreover, new features of DA have emerged, such as language-specific DA, that have created niche opportunities for providers. The opening has maximized consumer control by enabling customers to choose a different DA provider and reduced the competitive advantages enjoyed by the incumbent providers. Based on Germany’s implementation of uniform codes, approximately nine months should be sufficient to allocate numbers and implement new uniform codes. During Germany’s transition period, customer confusion was largely avoided. DTAG provided voice announcements directing customers to the new number for 11 months after the old DA number was discontinued. The German consumers generally accepted this system. It has been the VATM’s observation that competition in the DA market has led to improved service, greater accuracy, the emergence of innovative services, and economic growth. The FCC should expect similar positive results in the United States if it opens the 411 monopoly to competition.

3. The FCC Should Avoid the Mistakes Germany has Made and Ensure that ILECs only Charge Cost-based, Transparent and Verifiable Fees for Providing Their Customer Data.

While overall the introduction of DA competition has been successful in Germany, there are some areas of improvement needed. The FCC would be wise to avoid these mistakes in implementing such competition in the United States. These mistakes have unfortunately resulted in Germany falling back as the driving engine for the liberalization of DA services in Europe. The main reason for this is that the German Government allowed DTAG to impose burdensome

charges on competitors who wanted to have access to its customer data. The FCC, while opening this market sector to competition, should and can avoid these same mistakes that have stifled competition.

In Germany, all companies that intend to offer DA must rely on DTAG to obtain and to update the data listed in a directory. All competitive carriers must provide DTAG with their customer data, which DTAG merges with its own directory (the so-called “DTAG Redaktion”). This data pooling at DTAG leads to an absurd situation. A competitive carrier is required to provide DTAG with its customer data for free. At the same time, it must pay DTAG’s data pool a fee of Euro 0.15 (approximately US\$ 0.13) per data set so that its call centers can use the data for providing their own DA.

Competitors have argued that the charges of Euro 0.15 per data set that DTAG imposes are too high, not state-of-the-art and not cost-based. The clear evidence for this is that companies, including DTAG’s own subsidiary, sell CD ROMs with the entire national directory and millions of entries for less than \$25 per piece. It is unclear how much DTAG charges its own DA subsidiary “Teleauskunft” and its own directory publishing house “DeTeMedien” for providing and updating the customer data.

In its recent “7th Report” on Telecommunications in Europe, the European Commission accurately described this problem as follows:

“The conditions for providing directory services are still a matter of concern for new entrants. Indeed, the Competition Authority decided in 1998 on a ceiling that new entrants had to pay to DT [“Deutsche Telekom”] for providing information on its subscribers on the basis of cost-orientation. This ceiling still applies. New entrants still consider the amount to be excessive and question the method for breaking down the ceiling for charging for different types of receivers of the information. They also consider that the conditions set by the Competition Office are outdated, as new technologies that are most cost efficient are now available to provide the data. In addition, DT provides directory information to subscribers online free of charge

while they have to pay for the information. New entrants perceive this as discrimination and have filed a request to the Competition Authority to re-examine the issue.”²

So far, the German regulator RegTP has procrastinated and has not provided relief. The RegTP has argued that the Federal Cartel Office (and not RegTP) is supposed to decide the case under the German Telecommunications Act. However, past experience has shown that undergoing a proceeding at the Federal Cartel Office is burdensome and costly. It does not comply with the EU ONP Directive 98/10/EC that enshrines the principle that any disputes regarding the costs for the data should be the subject of a “simple proceeding” at the national regulator.

Therefore, in order to avoid this problem that Germany is having, the FCC should monitor and require ILEC charges for customer data to be transparent, verifiable and cost-based.

4. DTAG’s Free Internet-based DA in Combination with DTAG’s Access Charges Stifles Competition in this Market Sector.

The situation for DA competitors in Germany is aggravated by DTAG offering access to its customer data on its Website for free, as stated in the above-mentioned EU Report. It is in the consumer’s best interest to obtain DA services for the lowest price, but DTAG’s offer is discriminatory. Alternative DA providers are unable to offer the same services because, as mentioned above, they must pay DTAG Euro 0.15 for each individual data set. Therefore, no competitor is in the position to implement the same business model of Internet-based DA as DTAG. The VATM estimates that, due to DTAG’s free Internet-based DA, in combination with its usage charge of Euro 0.15 per data set, the German market for DA via the telephone is

² European Commission, 7th Report on the Implementation of the Telecommunications Regulatory Package, COM 2001(706), released November 28, 2001, p. 152.

shrinking by approximately 10 % each year. This is a scenario that the United States should avoid.

Accordingly, the VATM urges the FCC to take the following steps to ensure that DA services are offered on a cost-based and non-discriminatory basis. First, open DA services to competition by establishing a competitive numbering scheme 411XX or give competitors access to ILECs' 411 by presubscription. Second, the FCC should require and verify that any ILEC charges to access a database made to competitive providers of DA be transparent, verifiable and cost-based. Third, the FCC should foster competition in DA services by introducing new billing rules which are based on *non-discriminatory, cost-oriented and competitive terms*. If the FCC takes these steps, it should be able to introduce real competition to DA services, while avoiding some of the pitfalls that have started to stifle what was once a promising competitive situation in Germany.

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Respectfully Submitted by:

A handwritten signature in black ink, appearing to read "Troy Tanner", is written over a horizontal line.

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